

Page 1

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

SIOUX RURAL WATER SYSTEM,)
INC., a Non-Profit)
Corporation,)
)
Plaintiff,)
)
vs.) Case No. 4:15-CV-00229-BCW
)
CITY OF WATERTOWN, a South)
Dakota Municipality; and)
WATERTOWN MUNICIPAL)
UTILITIES, an Agency of)
the City of Watertown,)
)
Defendants.)

DEPOSITION OF RICHARD D. WESTBROOK, CPA, CFF
TAKEN ON BEHALF OF THE DEFENDANTS
JULY 1, 2016

Page 6

Page 8

1 many people don't fall into, but I'm going to go
 2 through a couple of ground rules anyway. The
 3 first one is I'm going to ask you verbal
 4 questions, I need verbal responses. We often
 5 communicate with nods of the head, and while that
 6 works fine between you and me, it makes it
 7 difficult for the court reporter, okay?
 8 A. Yes.
 9 Q. And make sure that I'm finished asking my
 10 question before you start answering it. I would
 11 appreciate it and so would the court reporter.
 12 I'll try to give you the same courtesy with your
 13 answers. I can tell you I can be somewhat verbose
 14 and deliberate at times so you might think I'm
 15 done when I'm not, okay?
 16 A. Okay.
 17 Q. Finally, if I ask you a question you don't
 18 understand, or if I use some word that doesn't
 19 make any sense to you in the context in which I
 20 use it, don't answer that question. Simply tell
 21 me you don't understand. I'll be happy to
 22 rephrase the question, okay?
 23 A. Yes.
 24 Q. That way any question you do answer I will
 25 assume is a question you understood; is that fair?

1 an agreement at that time to be engaged as an
 2 expert or were there subsequent contacts where
 3 that occurred?
 4 A. I believe I was contacted about
 5 mid-February, and probably within a week or two I
 6 had an engagement letter, which you have a copy of
 7 that in the -- or it's in my work papers that
 8 would be attached to -- or to support this.
 9 Q. Is it part of Exhibit 5, the engagement
 10 letter?
 11 A. It is not. It is not.
 12 Q. Okay.
 13 A. But it would be my work product to develop
 14 this, that would be in there.
 15 Q. Okay.
 16 A. And I believe that would be dated on or
 17 around that. So there may have been a week but it
 18 was pretty close to the time I was first
 19 contacted.
 20 Q. Okay. And when you were first contacted
 21 regarding this matter, what were -- how was -- how
 22 was the problem or the need explained to you with
 23 respect to your role as an expert or potential
 24 expert?
 25 A. They indicated that it was a 1926(b) case.

Page 7

Page 9

1 A. Yes.
 2 (Deposition Exhibit No. 5 was marked
 3 for identification.)
 4 Q. (By Mr. Hieb) I have marked and placed
 5 before you a document that's been marked as
 6 Exhibit 5. Do you recognize that?
 7 A. Yes, I do.
 8 Q. And what is that?
 9 A. That is my report in regards to being an
 10 expert witness in the Sioux Rural Water System
 11 Versus the City of Watertown.
 12 Q. And have you had a chance to review Exhibit
 13 5 that's sitting in front of you? All I'm asking
 14 you to do is tell me whether that appears to be a
 15 complete copy of the report that you submitted.
 16 A. Yes, it does.
 17 Q. Okay. With respect to this engagement, and
 18 when I call it "this engagement," I'm talking
 19 about any and all work that you're doing on behalf
 20 of Sioux Rural Water, when did you -- when were
 21 you first contacted?
 22 A. I believe it was probably mid-February of
 23 2016.
 24 Q. Okay. And at that time what was the -- what
 25 was the nature of the contact? Did you enter into

1 I've testified in two of those and one of them was
 2 in the last year and the other was probably 10
 3 years before that, or maybe even 15, I can't
 4 recall for sure. But the -- so I was familiar
 5 with at least some of what that would entail.
 6 They had stated that -- that they needed an expert
 7 witness to make a damage calculation under
 8 1926(b). And so we talked for -- I don't remember
 9 the detailed discussions but ultimately I decided
 10 to accept the engagement, sent them an engagement
 11 letter, they signed it, and I was considered
 12 engaged at that time.
 13 Q. And given the fact that you have had some
 14 prior experience or had prior experience with
 15 Section 1926 cases -- that's the right statute,
 16 isn't it, 1926?
 17 A. Uh-huh.
 18 Q. -- 1926 cases, I'm assuming you had a pretty
 19 good idea of what information you would need to be
 20 supplied in order to do the analysis that you
 21 needed to do to issue a report.
 22 A. Yes. There was an email I sent to them
 23 probably about that same time that said this is
 24 what I'm wanting.
 25 Q. And what -- what is that laundry list, if

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DISTRICT OF SOUTH DAKOTA
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Sioux Rural Water System, Inc.

vs.

**City of Watertown, A South Dakota Municipality;
And Watertown Municipal Utilities,
An Agency of The City of Watertown**

**Expert Witness Report of
Richard D. Westbrook, CPA, CFF
March 15, 2016**



EXPERT OPINION GENERAL DISCUSSION

The foundation and underlying support for my opinions may be found in this report and the various worksheets attached to this report.

EXPERT OPINION # 1

The System has suffered an annual loss of profits of \$15,588.17 by not being able to serve the 35 disputed customers. This loss was calculated based on the activity for the years of 2013, 2014 & 2015. It is also my opinion that this loss could be applied to 2016, as well as the years prior to 2013 as such calculation is unlikely to vary in any material amount since the methodology applied to arrive at this loss was based on a 3 year average.

EXPERT OPINION # 2

The System will continue to suffer an annual loss of profits as long as the System does not serve the 192 disputed customers. Such losses are calculated annually to be \$64,825.52 from 2017 through 2036 and \$74,377.87 from 2037 through 2049.

EXPERT OPINION # 3

The combined loss for all years (including the 2013 through 2016 as noted in Opinion #1) through the payoff of Federal debt is \$2,325,655 (historical dollars). The present value of this loss calculated to December 31, 2016 is \$1,675,476.

**SIOUX RURAL WATER SYSTEM, INC.
CALCULATION OF TOTAL LOST PROFIT FOR DISPUTED CUSTOMERS**

	<u>Pre 2017</u>	<u>2017 - 2036</u>	<u>2037 - 2049</u>
Sales per Disputed Customer			
Average gallons sold per customer per month	4,327		
Average gallons sold per customer per year	51,925		
Rate per thousand Gallons	\$ 3.60		
Incremental sales charge for average customer per year	\$ 186.93		
Base Rate @ \$37.00 X 12 months	444.00		
 Gross Sales per Average Customer	 \$ 630.93	 \$ 630.93	 \$ 630.93
 Cost of Water Sold per Disputed Customer			
Variable Costs for Sioux Treatment Plant	\$ 1.21	\$ 1.21	\$ 1.21
Variable Costs for Total System	2.38	2.38	2.38
Additional Costs for Pipe Improvements	-	1.75	0.93
Additional Costs for Well Field Improvements	-	0.31	0.17
Cost per thousand Gallons	\$ 3.59	\$ 5.65	\$ 4.69
Annual Cost per Average Customer	\$ 186.41	\$ 293.30	\$ 243.55
 Calculated Annual Gross Profit per Disputed Customer	 \$ 444.52	 \$ 337.63	 \$ 387.38
Calculated Annual Gross Profit for 35 Disputed Customers	\$ 15,558.17		
Calculated Annual Gross Profit for 192 Disputed Customers		\$ 64,825.52	\$ 74,377.87
 Calculated Total Gross Profit for Period of Federal Debt		 \$ 1,296,510.00	 \$ 966,912.00
 Calculated Total Lost Profit for Disputed Customers			
Net present value, discount rate based on IRS annuity rate as of December 31, 2015 (2.0%), all calculations made to December 31, 2016	\$ 64,790.00	\$ 1,068,762.00	\$ 541,924.00
Total present value of calculated lost profit	\$ 1,675,476.00		